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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

UNITED STATES OF AMERICA,)	
Complainant)	
)	8 U.S.C. § 1324c Proceeding
v.)	Case No. 96C00013
)	
MCLEOD A. FRANCIS.,)	
Respondent)	

FINAL DECISION AND ORDER
GRANTING COMPLAINANT'S MOTION FOR DEFAULT JUDGMENT
(June 20, 1996)

MARVIN H. MORSE, Administrative Law Judge

Appearances: Margaret M. Price, Esq., for Complainant
McLeod A. Francis, pro se

I. PROCEDURAL HISTORY

On February 5, 1996, the Immigration and Nationalization Service (INS or Complainant) filed its Complaint alleging violation of 8 U.S.C. § 1324c, in the Office of the Chief Administrative Hearing Officer (OCAHO). The Complaint includes an underlying Notice of Intent to Fine (NIF), served by INS on McLeod A. Francis (Respondent) on June 6, 1993.

Count I of the Complaint, the only count of the Complaint, charges Respondent with knowing use of a document issued to a person other than the possessor, i.e., the Respondent provided or attempted to provide the following documents: (1) Canadian Citizenship Card, #2371751, bearing the name of Rose Marie Clarke; and (2) Canadian Social Insurance Card, #467 542 437, bearing the name Rose Marie Clarke. INS demands a civil money penalty in the amount of \$250 per document, for a total of \$500*, and requests that I direct Respondent to cease and desist from violating 8 U.S.C. § 1324c(a)(3). Exhibit B to the Complaint is Respondent's request for hearing dated July 28, 1993. Exhibit A is the NIF.

On February 8, 1996, OCAHO issued a Notice of Hearing (NOH), which transmitted to Respondent the Complaint and a copy of the OCAHO rules of practice and procedure (Rules). The NOH cautioned Respondent that failure to file an Answer with an Administrative Law Judge (ALJ) within thirty (30) days of receipt could result in a waiver of the right to appear and contest the Complaint. Respondent was warned explicitly that absent a timely answer, the judge might "enter a judgment by default along with any and all appropriate relief."

*Erroneously recited in OSC as a total of \$250, corrected in this Final Decision and Order to read \$500 in civil money penalties per Complaint and NIF.

As confirmed by the return receipt delivered to OCAHO by the United States Postal Service, the NOH was received by Respondent on February 27, 1996. To date, no answer to the Complaint has been filed.

On May 20, 1996, Complainant filed a Motion for Default Judgment. The Motion, dated and served on May 16, 1996, asserts that Respondent is in default because he failed to file a written answer within thirty (30) days after service of the Complaint as required by 28 C.F.R. § 68.9(b) (1995).

On May 21, 1996, I issued an Order To Show Cause Why Default Judgment Should Not Issue (OSC) which outlined this procedural history and repeated the consequences to Respondent of failing to submit a timely answer. The OSC was served on Respondent by both certified and first class mail. 28 C.F.R. § 68.3(a)(3). The return receipt for the OSC copy served by certified mail has not been received by OCAHO. The OSC served by first class mail has not been returned as undeliverable. Relying on the fact that the copy sent by first class mail has not been returned, I conclude that it was received by Respondent within the weeks following May 21, 1996. The OSC provided an opportunity to explain prior failure to timely answer the Complaint and to show why judgment should not be issued against Respondent. I ordered a response by June 3, 1996. To date, no response to the OSC, Motion For Default Judgment or Complaint has been filed.

II. DISCUSSION

A. Respondent's Abandonment

OCAHO Rules contemplate that "[a] party shall be deemed to have abandoned a complaint or a request for hearing if : (1) A party or his or her representative fails to respond to orders issued by the Administrative Law Judge" 28 C.F.R. § 68.37(b)(1). In addition, OCAHO caselaw demonstrates that failure to respond to an Order To Show Cause triggers a judgment of default, equivalent to dismissal of the employer's request for hearing, against an employer who fails to respond to the invitation of such an order. "Having made no filing in response, Respondent necessarily positioned itself for entry against it of a judgment by default. This is that judgment." United States v. Hosung Cleaning Corp., 4 OCAHO 681, at 2 (1994).

In a number of similar cases, where Respondents appeared pro se, without counsel, parties that failed to obey orders of the Judge were found to have abandoned their requests for hearing, United States v. Erlina Fashions, Inc., 4 OCAHO 656 (1994), or to have abandoned their complaints, Holguin v. Dona Ana Fashions, 4 OCAHO 605 (1994); Brooks v. Watts Window World, 3 OCAHO 570 (1993); Speakman v. The Rehabilitation Hospital of South Texas, 3 OCAHO 476 (1992); Palancz v. Cedars Medical Center, 3 OCAHO 443 (1992).

B. Liability Established

On the basis of un rebutted allegations, I find that Respondent violated 8 U.S.C. § 1324c(a)(3). Having defaulted in his failure to respond to the Complaint, Motion For Default Judgment, and Order to Show Cause, Respondent is disabled from protesting that the allegations of the Complaint are not established as alleged by a preponderance of the evidence.

C. Complainant's Motion for Default Judgment Granted

The time for a response is long past. Accordingly, in accord with the OCAHO rules of procedure and specific notice to Respondent, I find Respondent in default. See 28 C.F.R. § 68.9(b).

III. ULTIMATE FINDINGS, CONCLUSIONS AND ORDER

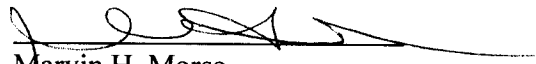
I have considered the Complaint and subsequent pleadings. For the reasons already stated, I find and conclude that:

1. Complainant's Motion For Default Judgment is granted;
2. As alleged in Count I of the Complaint, Respondent is in violation of 8 U.S.C. § 1324c(a)(3) for having knowingly provided and attempted to provide Canadian Citizenship Card #2371751 and Canadian Social Insurance Card #467 542 437, both lawfully issued to Rose Marie Clarke, a person other than the possessor;
3. Respondent shall pay civil money penalties in the amount of \$500 for the violations listed in Count I of the Complaint;
4. Respondent shall cease and desist from violating 8 U.S.C. § 1324c;
8. The hearing is canceled.

This Final Decision and Order granting Complainant's Motion for Default Judgment "shall become the final agency decision and order of the Attorney General unless, within 30 days, the Attorney General modifies or vacates the decision and order, in which case the decision and order of the Attorney General shall become a final order" 8 U.S.C. § 1324c(d)(4). Moreover, "A person or entity adversely affected by a final order under this section may, within 45 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order." 8 U.S.C. § 1324c(d)(5).

SO ORDERED.

Dated and entered this 20th day of June, 1996.


Marvin H. Morse
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that copies of the attached Final Decision and Order Granting Complainant's Motion for Default Judgment, were mailed postage prepaid this 20th day of June, 1996, addressed as follows:

Counsel for Complainant

Margaret M. Price, Esq.
Sector Counsel
United States Border Patrol
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Tonawanda, NY 14150

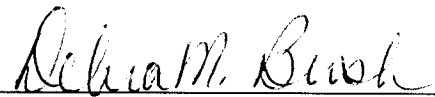
Dea Carpenter, Esq.
Immigration and Naturalization Service
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